

under 37 CFR 1.111 filed on or about October 19, 2005. Mailed as such to the former correspondence address so long after the effective change, the last Office Action was understandably returned to the Office and the Examining Unit in this case. Far less understandable was that the returned Office Action was neither re-mailed to the undersigned, although the new address was in the record, nor was the undersigned contacted at all by phone inasmuch as the correspondence telephone number has remained the same throughout the prosecution of the case. This Response is being promptly submitted by the Applicants only because of a status inquiry made by the undersigned on June 1, 2006. Upon learning of the prior issuance of the final Office Action almost four (4) months earlier, the undersigned reached the Examiner immediately and was provided with a "courtesy copy" of the Detailed Action of the final rejection by fax transmission. Notwithstanding the failure of the Office to make a reasonable attempt to notify the undersigned with the statutory period running on an abandonment and the prejudicial delay caused thereby upon the Applicants, this Response to the "final" Office Action (still not received in its entirety) is being filed together with a Petition for Extension of Time under 37 CFR 1.136(a) to ensure its proper consideration.

Based upon review of the "courtesy copy" of the Detailed Action, Claims 1-12, inclusive, remain in this application with Claims 1-3, 5, 7-9, and 11 now standing in final rejection under the last Office Action. While no claims have been allowed, Claims 4, 6, 10 and 12 are each recognized to contain allowable subject matter and are objected to as being dependent upon a corresponding rejected base claim. For reasons stated below, a formal request is hereby made for reconsideration of the finality of the last Office Action and for withdrawal of the standing rejection of all those finally rejected Claims.

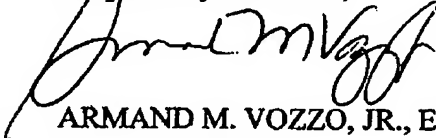
Claims 1, 2, 7 and 8 stand finally rejected in the last Office Action under 35 U.S.C. 102(e) as being anticipated by Del Bianco et al., a U.S. Patent (No. 6,859,327) that was granted February 22, 2005 on the basis of a national stage filing completed under 35 U.S.C. 371 on October 18, 2002 and then subsequently published under 35 U.S.C. 122(b) on March 27, 2003, all such material dates of the reference being after the filing date of the present application. Accordingly, the Del Bianco et al. reference is not available as a prior art reference under 35 U.S.C. 102(e)(1). Furthermore, the national stage filing of Del Bianco et al. was made on the basis of a corresponding International Application (PCT/AT00/00337) filed December 11, 2000 and subsequently published by the World Intellectual Property Office (WIPO) on June 14, 2001. Except for the Title and brief Abstract of the invention, the WIPO publication of the Del Bianco et al. International Application was not published in the English language but was rather in German. Thus, while the Del Bianco et al. International Application designated the United States, it was not published under Article 21(2) of the PCT in the English language, as required under 35 U.S.C. 102(e)(2), and is therefore inappropriate as a prior art reference under 35 U.S.C. 102(e)(2). Nevertheless, the Examiner has cited specific teachings in the Specification of Del Bianco et al. in making the final rejection and proceeded in applying that reference as prior art under §102(e) contrary to the *Examination Guidelines for Applying References under 35 U.S.C. 102(e)* set forth in M.P.E.P. §706.02(f)(1) and the associated Flowcharts found therein for determining effective §102(e) reference dates. In fact, illustrative "Example 5" found in M.P.E.P. §706.02(f)(1) presents an identical prior art reference case to the one at hand and concludes that there is no effective §102(e) date to be given to the reference. In view of the governing law and associated rules implemented under 35 U.S.C. 102(e) and those recognized particulars stated accurately above regarding the Del Bianco et al. patent and its International

Application, it is unwarranted to use and apply Del Bianco et al. as a §102(e) prior art reference in this case.

Accordingly, the standing final rejection of Claims 1, 2, 7 and 8 made in the last Office Action under 35 U.S.C. 102(e) on the prior art basis of Del Bianco et al. should be removed and the finality of that Office Action should be withdrawn in its entirety, including the standing rejection of those dependent Claims 3, 5, 9 and 11 further made therein on the basis of Del Bianco et al. but under 35 U.S.C. 103(a). With the requested withdrawal of the finality of the last Office Action, it is acknowledged that a restated rejection of the Claims may be made on the basis of Del Bianco et al., but then under 35 U.S.C. 102(a), with the effective date of the prior art reference in such case being its foreign publication date for purposes of swearing back of the reference by the Applicants.

In view of this Response and the arguments presented herein, a prompt reconsideration and withdrawal of the finality of the last Office Action is earnestly solicited.

Respectfully submitted,



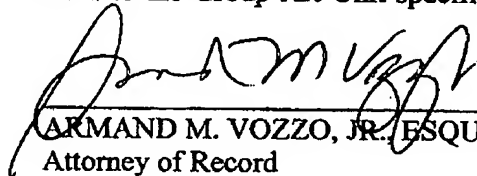
ARMAND M. VOZZO, JR., ESQUIRE
Attorney of Record

19 Short Road
Doylestown, PA 18901
(215) 348-4733

CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the USPTO on 6-10-2006, being directed to the Group Art Unit specifically assigned to the subject application.

Date: 6-10-2006



ARMAND M. VOZZO, JR., ESQUIRE
Attorney of Record